

REMARKS

In the Notice of Non-compliant Amendment dated September 11, 2008, the Examiner alleges that the numbering of claims is not in accordance with 37 C.F.R. §1.126 which requires the original numbering of the claims be preserved throughout prosecution. The Examiner alleges that the claims originally filed in the paper dated February 28, 2005 show that claims 1-92 were pending; yet the most recent Amendment filed on June 22, 2008 lists claims 1-27 as canceled and claims 28-37 as added.

In response, Applicants respectfully submit that the Examiner's determination that claims 1-92 were pending in the paper filed on February 28, 2005 is entirely erroneous. The papers submitted on February 28, 2005 in accordance with 35 U.S.C. §371 include:

- A corrected version of the corresponding PCT application, PCT/AU2003/001111, including the original PCT claim pages with a line striking through each page (original PCT pages 134-147, corresponding to original PCT claims 1-92), and replacement pages 134-137 (corresponding to substitute claims 1-27).
- Substitute claims (claims 1-27), properly filed on September 2004 under Article 34 in the PCT application, in response to the Written Opinion dated May 19, 2004.

Additionally, Applicants paid claim fees based on this substitute set of claims on February 28, 2005.

Applicants respectfully direct the Examiner's attention to MPEP §1893(a)(3), stating that amendments properly filed under PCT Article 34 should be entered absent Applicant's clear instructions to the contrary. Here, Applicants actually specifically directed the entry of the substitute claims by providing the substitute claims, and by payment of appropriate claim fees. Further, the official filing receipt also indicates the filing of 27 claims for this application.

Accordingly, it is respectfully submitted that the Amendment filed on June 22, 2008 is in compliance with the relevant rules regarding claim numbering. Applicants respectfully urge that the Examiner provide an action on the merits with respect to pending claims 1-27.

Respectfully submitted,



Xiaochun Zhu
Registration No. 56,311

SCULLY, SCOTT, MURPHY & PRESSER, P. C.
400 Garden City Plaza-STE 300
Garden City, New York 11530
(516) 742-4343
XZ:ab